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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/826,710 | 04/16/2004 | Robert W. Young | P-1089A | 1773 |
| 7590 | 10/05/2004 | | EXAMINER | |
| Scott R. Cox 400 West Market St., Ste. 2200 Louisville, KY 40202 | | | PICKETT, JOHN G | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3728 | |

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-----------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/826,710 | YOUNG ET AL. | |
| | Examiner Gregory Pickett | Art Unit 3728 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 April 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 16 April 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>6/14/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1, 2, 6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Cullen et al (US 4,957,521; supplied by applicant.) or Davy (US 3,199,756) in view of Applicant's Admitted Prior Art (page 4, lines 8-14 & page 5, lines 14-16 of the instant application; hereinafter AAPA) and Fukumoto et al (US 5,961,025).

Claims 1, 2, 6, and 8 are product-by-process claims.

Regarding claims 1 and 2, both Cullen and Davy disclose continuous strips of packets holding bulk material. Cullen and Davy lack, or do not expressly disclose a splice arrangement.

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AAPA discloses that it was known in the art at the time the invention was made to splice two ends of a continuous strip of packets together in the instances of problems during processing (see Instant application, page 4, lines 2-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to splice the ends of either Cullen or Davy together in instance of damage to the strips during processing.

Either Cullen-AAPA or Davy-AAPA discloses the claimed invention except that AAPA uses adhesive tape instead of ultrasonic welding.

Fukumoto shows that ultrasonic welding was an equivalent splicing means known in the art at the time the invention was made. Therefore, because these two splicing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute ultrasonic welding for adhesive tape, in order to prevent incorrect tape application from gumming up equipment further down the line.

As to claims 6 and 8, the method of forming the device is not germane to the issue patentability of the device itself. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

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2. Claims 1, 3, 4, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Cullen et al (US 4,957,521; supplied by applicant.) or Davy (US 3,199,756) in view of AAPA and Ward (US 6,342,118).

Claims 1, 3, 4, 7, and 9 are product-by-process claims.

Regarding claims 1 and 3, both Cullen and Davy disclose continuous strips of packets holding bulk material. Cullen and Davy lack, or do not expressly disclose a splice arrangement.

AAPA discloses that it was known in the art at the time the invention was made to splice two ends of a continuous strip of packets together in the instances of problems during processing (see Instant application, page 4, lines 2-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to splice the ends of either Cullen or Davy together in instance of damage to the strips during processing.

Either Cullen-AAPA or Davy-AAPA discloses the claimed invention except that AAPA uses adhesive tape instead of heat sealing.

Ward shows that heat sealing was an equivalent splicing means known in the art at the time the invention was made. Therefore, because these two splicing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute heat sealing for adhesive tape, in order to prevent incorrect tape application from gumming up equipment further down the line.

As to claims 4, 7, and 9, the method of forming the device is not germane to the issue patentability of the device itself. If the product in the product-by-process claim is

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the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

3. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Cullen et al (US 4,957,521; supplied by applicant.) or Davy (US 3,199,756) in view of AAPA and Klingebiel (US 5,385,622).

Claims 1 and 5 are product-by-process claims.

Both Cullen and Davy disclose continuous strips of packets holding bulk material. Cullen and Davy lack, or do not expressly disclose a splice arrangement.

AAPA discloses that it was known in the art at the time the invention was made to splice two ends of a continuous strip of packets together in the instances of problems during processing (see Instant application, page 4, lines 2-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to splice the ends of either Cullen or Davy together in instance of damage to the strips during processing.

Either Cullen-AAPA or Davy-AAPA discloses the claimed invention except that AAPA uses adhesive tape instead of simply adhesive.

Klingebiel shows that adhesive alone was an equivalent splicing means known in the art at the time the invention was made. Therefore, because these two splicing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the adhesive of

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Klingebiel for the adhesive tape of AAPA, in order to reduce the layers of material at the splice joint.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gop
Greg Pickett
Examiner
27 September 2004

Mickey Yu
Mickey Yu
Supervisory Patent Examiner
Group 3700